

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease WYW 96433.

Affirmed.

1. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Termination

Pursuant to 30 U.S.C. | 188(b) (1982), when a lessee fails to pay the required rental on or before the anniversary date of the lease, and the lease has no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law. The Secretary may reinstate the lease, pursuant to 30 U.S.C. | 188(c) (1982), if the full rental is paid within 20 days of the lease anniversary date, and the failure to timely pay was justifiable or not due to a lack of reasonable diligence. Mailing the rental payment after the lease anniversary date does not constitute reasonable diligence.

2. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Termination

Under procedures for class I reinstatement, 30 U.S.C. | 188(c) (1982), failure to exercise reasonable diligence in paying the rental for an oil and gas lease may be considered justifiable if it is demonstrated that, at or near the anniversary date, there existed sufficiently extenuating circumstances outside of the lessee's control which affected her actions in failing to make timely payment. Mere negligence, forgetfulness and inadvertence of the lessee in effecting rental timely are not sufficient to warrant class I reinstatement.

APPEARANCES: Nancy Houston, pro se.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

Nancy Houston has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated February 23, 1989, denying her

petition for class I reinstatement of oil and gas lease WYW 96433, which terminated on November 1, 1988, for failure to pay rental on or before that date.

The envelope in which appellant's rental was sent is postmarked November 10, 1988. The Minerals Management Service (MMS) date stamp on the envelope shows that MMS received the rental payment on November 14, 1988.

By notice dated November 23, 1988, BLM informed appellant that the lease had terminated on its anniversary date and that she had the right to petition for reinstatement under 30 U.S.C. | 188(c) (1982) (class I reinstatement) and 30 U.S.C. | 188(d) (1982) (class II reinstatement). Appellant filed a timely petition for class I reinstatement.

In its decision BLM noted that in order to be eligible for class I reinstatement, 30 U.S.C. | 188(c) (1982), it must be shown that the failure to timely submit the full amount of the rental was either justified or not due to a lack of reasonable diligence on the part of the lessee. BLM found that appellant had not shown reasonable diligence and therefore denied her petition for class I reinstatement. BLM stated that no petition for class II reinstatement had been filed within the required time period, and ruled that the case was closed.

On appeal appellant states: "I am appealing because I elected to follow your instructions. For that reason you cannot turn me down." (Emphasis in original.)

[1, 2] Section 31(b) of the Mineral Leasing Act, as amended, 30 U.S.C. | 188(b) (1982), provides in part that "upon failure of a lessee to pay rental on or before the anniversary date of the lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law." Such lease, however, may be reinstated under section 31(c), 30 U.S.C. | 188(c) (1982), if the rental was paid within 20 days after the anniversary date and a showing is made by the lessee that the failure to pay on or before the anniversary date "was either justifiable or not due to a lack of reasonable diligence on the part of the lessee." See 43 CFR 3108.2-2(a) (class I); Ann L. Rose, 92 IBLA 308 (1986); Melvin P. Clarke, 90 IBLA 95, 97-98 (1985). The burden of showing that the failure to pay on or before the anniversary date was justified or not due to a lack of reasonable diligence is on the lessee. 43 CFR 3108.2-2(b).

It is well established that mailing a rental payment after the lease anniversary date does not constitute reasonable diligence. Ann L. Rose, supra at 310, and cases there cited. The postmark on the rental payment envelope indicates that appellant failed to meet this standard. Failure to exercise reasonable diligence may be considered justifiable if it is demonstrated that, at or near the anniversary date, there existed sufficiently extenuating circumstances outside of the lessee's control which affected her actions in failing to make timely payment. Freedom Oil Co., 87 IBLA 71, 75 (1985); Dena F. Collins, 86 IBLA 32 (1985). The key component of this test

is that the factors which caused the late payment must be outside the control of the lessee. See Ram Petroleum, Inc. v. Andrus, 658 F.2d 1349 (9th Cir. 1981); Ramoco Inc. v. Andrus, 649 F.2d 814 (10th Cir. 1981), cert. denied, 454 U.S. 1032 (1981). Appellant has not offered any explanation of such circumstances which might justify her late payment. Further, the Board has held on numerous occasions that mere negligence, forgetfulness, and inadvertence of the lessee in effecting rental timely are not sufficient to warrant class I reinstatement, since they are circumstances within the lessee's control. Edgar B. Stern, 86 IBLA 72, 75 (1985); James P. Felt, 84 IBLA 205, 207 (1984); Leo M. Krenzler, 82 IBLA 205, 209 (1984); Eleanor L. M. Dubey, 76 IBLA 177, 179 (1983).

Appellant has neither justified her failure to timely submit her rental payment nor presented evidence that she exercised reasonable diligence. As Congress established that one of those elements must be present before reinstatement may be granted, the Department is without authority to reinstate the lease under the class I reinstatement procedures.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Wm. Philip Horton  
Chief Administrative Judge

I concur:

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C. Randall Grant, Jr.  
Administrative Judge